REMARKS/ARGUMENTS

The Office Action of August 6, 2007 has been carefully reviewed and this paper is Applicants' response thereto. Claims 1-23 are pending in the application. Claims 1-14 and 16-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable in view of U.S. Patent No. 6,639,234 to Badura *et al.* ("Badura") in view of U.S. Patent No. 3,916,923 to Branton ("Branton"). Claim 15 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,540,681 to Strul *et al.* ("Strul") in view of Branton. Applicants respectfully traverse the rejection in view of the following remarks.

Rejection under 35 U.S.C. §103 – Badura and Branton

Claims 1-14 and 16-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Badura in view of Branton. Claims 1 and 11 are independent.

As admitted in the Office Action, Badura fails to disclose "in response to receiving the ON command signal, initiating a cycle ON timer to operate for a predetermined cycle ON time." The Office Action suggests, however, that Branton corrects the deficiency in Badura.

As an initial matter, Applicants respectfully assert that Branton is not analogous art. Badura is directed to a method for checking beam steering in an ion beam therapy system. Badura, Abstract. As Badura explains, ion beam therapy systems are preferably used in the treatment of tumors. Badura, Col. 1, Ln. 11-12. In stark contrast, Branton is directed toward an automatic washing and sanitizing apparatus for a pipeline milking system. Branton, Abstract. Branton explains that the reason for the invention of Branton is that milking systems are subject to extremely rigid cleaning requirements. Branton, Col. 1, Ln. 6-7. The Office Action has provided no explanation for why a person seeking to modify the beam steering method disclosed by Badura would look to Branton's washing and sanitizing system for pipeline milking system to find features to add to the method of Badura. Thus, the Office Action has failed to provide any support for why a person of ordinary skill would consider the disclosure of Branton when attempting to improve on the system of Badura. Furthermore, Applicants respectfully submit there does not appear to be any logical reason for why a person of skill in the art would look to sanitizing systems for pipeline milking apparatus when designing ion beam steering systems. For example, the safety requirements of an ion beam system such as disclosed by Badura appear to have nothing in common with the sanitization standards of a milk pipeline cleaning system

such as is disclosed by Branton. Therefore, in view of the non-analogous nature of the two references, combining these two references is only possible with impermissible hindsight reconstruction.

In addition to not being analogous art, the Office Action has provided no indication of how the system of Badura would be modified with the disclosure of Branton. In this regard, merely stating that it would be obvious to use the system of Branton with the system of Badura, without more, fails to provide the articulated reasoning required by law. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 1741 (2007) ("To facilitate review, this analysis should be made explicit. *See In re Kahn,* 441 F.3d 977, 988 (C.A.Fed. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness"). "). This type of conclusory rejection also fails to meet the requirements of the new guidelines promulgated by the USTPO. For example, the new guidelines state:

> invention.[43] "[I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does."[44] If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art.

Federal Register, Vol. 72, No. 195, pg. 57529. Thus, the rejection is deficient.

Furthermore, it is unclear how the system used to sterilize the pipeline milking system of Branton could be used to modify the system disclosed by Badura. For example, it appears the system of Branton is an analog system that is unlikely to be compatible with the system of Badura.

In addition, Branton fails to disclose step of "in response to receiving the ON command signal, initiating a cycle ON timer to operate for a predetermined cycle ON time" because Branton discloses that program timer 24 is manually moved to the washing positions, thus there

is no disclosure of initiating a cycle ON timer in response to receiving the ON command. Rather, it appears that Branton is incapable of receiving commands at all.

Therefore, for at least the above reasons, the rejection of claim 1 based on the combination of Badura and Branton fails to support a *prima facie* case of obviousness. Accordingly, claim 1 is patentable over these references.

Claims 2-10 depend from claim 1. Therefore, claims 2-10 are patentable for at least the reasons that claim 1 is patentable and for the additional features recited therein.

Independent claim 11 has been amended to recite "a cycle ON timer within the second component, wherein, in operation, the cycle ON timer is activated in response to the second component receiving the ON command signal." For reasons similar to the reasons discussed above with respect to claim 1, the combination of Badura and Branton fails to support a *prima facie* case of obviousness with regards to claim 11. Consequently, claim 11 is patentable in view of Badura.

Claims 12-14 and 16-23 depend from claim 11. Therefore, claims 12-14 and 16-23 are patentable for the reasons that claim 11 is patentable and for the additional features recited therein.

Accordingly, withdrawal of this ground of rejection is respectfully requested.

Rejections of 35 U.S.C. §103 – Strul and Branton

Claim 15 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Strul in view of Branton. As previously noted in Applicants' prior response, no proper support has been given for why Strul can be said to render claim 15 obvious. For example, claim 15 depends from claim 11, which recites two components, and the Office Action has failed to explain the rationale for why Strul is believed to disclose the recited features of claim 11. As noted above, such a conclusory rejection fails to meet the requirements explained by United States Supreme Court or the Guidelines provided by the USPTO.

Furthermore, for reasons similar to the reasons discussed above, the sanitizing system for pipeline milking systems disclosed by Branton cannot be considered analogous art to the tissue ablation system disclose by Strul. For example, no support has been provided for why a person of skill in the art would look to Branton when attempting to modify Strul, nor how such a modification would be possible. Rather, the attempt to combine Branton's sanitizing system for

pipeline milking systems with Strul's tissue ablation system can is the result of improper hindsight reconstruction.

In addition, as noted above, Branton fails to disclose step of "in response to receiving the ON command signal, initiating a cycle ON timer to operate for a predetermined cycle ON time" because Branton discloses that program timer 24 is manually moved to the washing positions, thus there is no disclosure of initiating a cycle ON timer in response to receiving the ON command. Rather, it appears that Branton is incapable of receiving commands at all.

Furthermore, claim 15 recites that the second component is implantable. Plainly, a system of manually adjusting the timer as disclosed by Branton would be incompatible with an implantable system because once a timer is implanted one could not manually adjust it. Thus, the combination of Strul and Branton simply does not make sense. At a minimum, there has been no express rationale for why a person would look to Branton to modify Strul, nor has there been any disclosure for how the system of manually adjusting the timer, as disclosed by Branton, would work with the system disclosed by Strul and still meet the features recited in claim 15.

In addition, Applicants respectfully submit it would not be obvious to adapt the radio frequency ablation method of Strul where the RF energy is controlled based on monitoring temperature and power to include the features recited in claim 15. For example, there has been no support provided to show that Strul discloses a component that both could receive the signal and is also implantable. Plainly, the sanitizing system of Branton does not help in this regard. Therefore, for at least the above reasons, Strul cannot be said to support a *prima facie* case of obviousness with respect to claim 15.

Thus, for at least the above reasons the combination of Branton and Strul fails to support a *prima facie* case of obviousness. Accordingly, withdrawal of this ground of rejection is respectfully requested.

CONCLUSION

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the number set forth below.

Respectfully submitted,

Dated: November 6, 2007

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